

1
2 **UNITED STATES DISTRICT COURT**
3
4 **EASTERN DISTRICT OF CALIFORNIA**

5 HOPE MAGEE, individually and as
6 Successor in Interest to JACOREY SHAW,
7 deceased, et al.,

8 Plaintiffs,

9 v.

10 ADAM CHRISTIANSON, et al.,

11 Defendants.

12 CASE NO. 1:21-cv-00670-AWI-BAM

13 **ORDER:**

- 14 **(1) DISMISSING CLAIMS WITH
15 PREJUDICE; AND**
- 16 **(2) CLOSING CASE**

17 (Doc. No. 51)

18 Plaintiffs Hope Magee and Paul Shaw are the parents of Jacorey Shaw, who died on
19 September 6, 2018 while in the custody of the California Department of Corrections and
20 Rehabilitation (“CDCR”).¹ Shaw was incarcerated at the Sierra Conservation Center (“SCC”),
21 which is in Tuolumne County, at the time of his death, and his autopsy was conducted in and by
22 Stanislaus County. Plaintiffs commenced this action on April 22, 2021, Doc. No. 1, and on June
23 28, 2021, they filed a First Amended Complaint (“FAC”) (the operative pleading in this case)
24 setting forth seven causes of action against Tuolumne County, Stanislaus County and certain
25 persons in their respective employ:² (1) conspiracy to violate civil rights under 42 U.S.C. § 1985
26 (“First Cause of Action”); failure to prevent conspiracy to violate civil rights under 42 U.S.C. §
27 1986 (“Second Cause of Action”); supervisory liability for civil rights violations under 42 U.S.C.
28

1 Detailed case summaries are provided in previous orders. See, e.g., Doc. No. 51 at 1:24-4:27.

2 Rodney Hobbs, Oliver Imlach and Bill Pooley were named as Defendants in connection with their employment with
3 Tuolumne County. Hobbs, Imlach, Pooley and Tuolumne County are referred to collectively herein as the “Tuolumne
4 Defendants.” Adam Christianson, Sung-Ook Baik and Frank Leyva were named as Defendants in connection with
5 their employment with Stanislaus County. Christianson, Baik, Leyva and Stanislaus County are referred to
6 collectively herein as the “Stanislaus Defendants.” Individuals affiliated with the CDCR were also named as
7 Defendants. They were terminated as Defendants in January 2022 following settlement. Doc. Nos. 42-45.

1 § 1983 (“Third Cause of Action”); unconstitutional failure to train under § 1983 (“Fourth Cause of
2 Action”); violation of substantive due process rights under § 1983 (“Fifth Cause of Action”);
3 unconstitutional denial of medical care under § 1983 (“Sixth Cause of Action”); and
4 unconstitutional failure to protect under § 1983 (“Seventh Cause of Action”). Doc. No. 7.

5 On July 1, 2022, the Court dismissed all claims against the Tuolumne Defendants on a
6 motion brought by the Tuolumne Defendants. Doc. Nos. 19 & 51. The First Cause of Action—
7 which the Court construed as arising under § 1985(3)—was dismissed with prejudice because
8 Plaintiffs could not allege facts showing that Shaw was a member of a protected class for purposes
9 of the conduct at issue. Doc. No. 51 at 6:14-9:28. The Second Cause of Action was dismissed with
10 prejudice because Plaintiffs failed to allege a predicate § 1985 violation, as required for a § 1986
11 claim. Id. at 10:2-23. And all seven causes of action were dismissed with prejudice on the grounds
12 that they were untimely. Id. at 13:15:19-20:14. Specifically, the Court stated as follows:

13 ... [T]he statute of limitations runs from September 6, 2018 at the latest for
14 Plaintiffs’ conspiracy claims under the last overt act doctrine, and the last overt act
15 doctrine has no applicability to claims that do not involve conspiracy. Given the
16 filing date of this action, tolling under [California Judicial Council’s Emergency
17 Rule of Court Rule 9 (“Emergency Rule 9”)] is insufficient to save claims running
18 from September 6, 2018. Finally, Plaintiffs did not adequately plead delayed
discovery in the FAC and effectively concede in the opposition that delayed
discovery does not apply. The Court therefore finds that all of Plaintiffs’ claims are
time-barred. This defect cannot be cured with amendment so the claims will be
dismissed with prejudice. [citation omitted]

19 Id. at 20:7-14.³

20 In addition to dismissing all seven causes of action as to the Tuolumne Defendants, the
21 Court dismissed the First and Second Causes of Action with prejudice as to the Stanislaus
22 Defendants and gave Plaintiffs 14 days to show in writing why their claims were not time-barred
23 as to the Stanislaus Defendants. Doc. No. 51 at 20:15-21:2. The order also stated that “all claims
24 against the Stanislaus Defendants [would] be dismissed with prejudice as time-barred and this case
25 [would] be closed without further notice to the parties” if Plaintiffs failed to make the required
26

27 ³ In addition to foregoing, the Court dismissed the Third, Fourth, Fifth, Sixth and Seventh Causes of Action for failure
28 to state a claim, Doc. No. 51 at 12:15-15:17, and denied Plaintiffs’ request to restate the First Cause of Action as a §
1983 claim on the grounds that any such claim would be time-barred. Id. at 20:18-20.

1 showing. Id. at 20:28-21:2.

2 Plaintiffs have not filed anything in response to the July 1, 2022 order to show cause and
3 the deadline for doing so has passed. See Doc. No. 51 at 20:26-28. Reviewing the record confirms
4 that all seven of Plaintiffs' claims arose no later than September 6, 2018 (the day of Shaw's
5 death), even applying the last overt act doctrine. See id. at 15:18-18:19. The longest applicable
6 statute of limitations was two years, see id. at 15:23-16:3, and this action was not filed until April
7 22, 2021. See Doc. No. 1. Plaintiffs have not shown—or even attempted to show—delayed
8 discovery and tolling under Emergency Rule 9 is not sufficient to save Plaintiffs' claims, even
9 assuming Emergency Rule 9 applies in federal court. See Doc. No. 51 at 18:9-20:5.

10 The Court therefore finds that all seven of Plaintiffs' claims are time-barred as to the
11 Stanislaus Defendants and that, consequently, dismissal is warranted. See United States ex rel. Air
12 Control Techs., Inc. v. Pre Con Indus., Inc., 720 F.3d 1174, 1178 (9th Cir. 2013). Since there are
13 no other remaining Defendants, the Court will enter judgment and close this case.

14 **ORDER**

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. The First, Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action (Doc. No.
17 7) are DISMISSED WITH PREJUDICE as to Stanislaus County, Adam Christianson,
18 Sung-Ook Baik and Frank Leyva on the ground that they are time-barred;
19 2. All pending dates in this action—including the August 31, 2022 scheduling conference
20 before Magistrate Judge McAuliffe—are VACATED;
21 3. The Clerk of Court is respectfully DIRECTED to ENTER JUDGMENT consistent
22 with this order and the Court's July 1, 2022 order (Doc. No. 51) and CLOSE this case.

23 IT IS SO ORDERED.

24 Dated: August 18, 2022



SENIOR DISTRICT JUDGE